

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

In re:

Case No. 9:16-bk-10583-FMD

SEMINOLE TRACKS, INC.

Debtor.

/

**DEBTOR'S RESPONSE TO MOTION TO DISMISS CHAPTER 11 CASE**

SEMINOLE TRACKS, INC., as debtor and debtor in possession (the “Debtor”), by and through the undersigned counsel, hereby responds to the Motion to Dismiss (Doc. No. 17) (the “Motion”) filed by Dennis Perkins d/b/a Perkins Construction (“Perkins”), and in support of denial of the Motion, states as follows:

**PRELIMINARY STATEMENT**

This bankruptcy case was not filed with the “intent to abuse the judicial process and the purposes of the reorganization process” repeatedly and routinely required by courts to constitute “cause” for dismissal. This case was filed for the legitimate purpose of preserving the equity in the Property (as defined below) purchased by the Debtor in 2004. This bankruptcy case further prevents a windfall by Perkins as his claim is far less than the value of the Property, though he apparently seeks to have it all for himself. The Debtor therefore requires the protection of this Court while it achieves a fair and equitable reorganization of its affairs, including addressing its obligations to Perkins and the other creditors. Importantly, the Debtor has already started drafting a viable and confirmable plan of reorganization accompanied by sale and sale procedures motions proposing the timely sale of the Property.

**FACTUAL AND PROCEDURAL POSTURE**

1. On December 13, 2016, the Debtor filed a voluntary petition under the provisions of Chapter 11 of the Bankruptcy Code (the “Petition Date”). No trustee having been appointed, the Debtor continues to operate its business and manage its property pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. The Debtor is a Florida corporation that owns approximately 403.86 acres of land having an address of 24515 Dooley Grade Road, Clewiston, Florida 33440 (the “Property”). The Property consists of three parcels containing a paved two mile automobile race and test track, conference room with kitchenette, workshop and storage spaces, an observation tower, observation deck and utilities including electric, water and air conditioning. The Property is additionally used for raising cattle.

3. On December 21, 2016 – only eight (8) days after the Petition Date and without conferring with, or even contacting in any manner, bankruptcy counsel for the Debtor – Perkins filed the Motion seeking dismissal of the bankruptcy case for “cause” under Section 1112(b) of the Bankruptcy Code. Perkins separately seeks stay relief under Section 362(d)(1) for the same alleged “cause” (Doc. No. 16).

4. The Motion admits the Property was recently listed for sale for “ten million dollars (\$10,000,000.00)” and even the Hendry County Property Appraiser has a tax assessed value far in excess of Perkins’ claim. (Motion ¶¶ 8, 14, 16.) The Motion further fails to allege that the bankruptcy case was filed with the “intent to abuse the judicial process and the purposes of the reorganization process.”

## **ARGUMENT**

5. Section 1112(b)(4) of the Bankruptcy Code enumerates a non-exhaustive list of factors constituting “cause,” including the following applicable at the onset of a case:

- A. substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- B. gross mismanagement of the estate;
- C. failure to maintain appropriate insurance that poses a risk to the estate or to the public;
- D. unauthorized use of cash collateral substantially harmful to 1 or more creditors; and
- E. failure to comply with an order of the court.

6. Other circumstantial factors have been identified by the Eleventh Circuit, but the court “has always been careful to add that there is no particular test for determining whether a debtor has filed a petition in good faith, but that in finding a lack of good faith courts have emphasized *an intent to abuse the judicial process and the purposes of the reorganization process.*” *In re Star Trust*, 237 B.R. 827, 833 (Bankr. M.D. Fla. 1999) (denying creditor’s motion to dismiss in the absence of an intent to abuse the judicial process or the reorganization process) (*emphasis added*) (*citations omitted*).

7. Here, the Motion argues that this is a single asset real estate case that should be dismissed for “cause” under the limited factors from *In re Phoenix Piccadilly*, 849 F.2d 1393 (11th Cir. 1988). (Motion at 9-13).<sup>1</sup> The Motion makes no attempt to argue the enumerated factors in Section 1112(b)(4) – likely because none apply. Perkins does not – and presumably

---

<sup>1</sup> There has been no motion filed to determine that the Debtor is a single asset real estate debtor as defined in Section 101(51B). In fact, the Debtor maintains cattle on the Property.

cannot – argue that there is substantial loss to the estate, gross mismanagement, risk to the public, unauthorized use of cash or non-compliance with an order of this Court under Section 1112(b)(4). Perkins likewise does not argue that there has been “an intent to abuse the judicial process and the purposes of the reorganization process” as has been consistently required by the Eleventh Circuit. *In re Star Trust*, 237 B.R. at 833-34 (compiling cases). The failure to argue such cause is fatal to the Motion.

8. Moreover, there is nothing inherently improper about a single asset Chapter 11 bankruptcy case. *In re Tiffany Square Assoc., Ltd.*, 104 B.R. 438, 441 (Bankr. M.D. Fla. 1989) (*citations omitted*). Congress expressly acknowledged that Chapter 11 is available to single asset real estate debtors in Section 362(d)(3). *See also Jacksonville Riverfront Development, Ltd.*, 215 B.R. 239 (Bankr. M.D. Fla. 1997). Dismissal is inappropriate in “the presence of the honest intention of the Debtor and some real need and real ability to effectuate the aim of reorganization even if it involves the total liquidation of the assets.” *In re North Redington Beach Assocs., Ltd.*, 91 B.R. 166, 169 (Bankr. M.D. Fla. 1988) (finding a lack of bad faith filing even though the petition was filed just ten minutes prior to the foreclosure sale); *In re Metro Palms I Trust*, 153 B.R. 922, 924 (Bankr. M.D. Fla. 1993) (nothing that a mechanical application of the *Phoenix Piccadilly* factors indicated that the case had the hallmarks of bad faith, but stating “[i]n the last analysis, the ultimate test is still whether there is a ‘real need’ of reorganization and a showing by the Debtor of its ability to effectuate a reorganization within a reasonable time without inordinate delay.”) (*citations omitted*).

9. In this case, there “is the presence of honest intention of the Debtor and some real need and real ability to effectuate the aim of the reorganization even if this involves the total liquidation of the assets.” *In re North Redington Beach Assocs.*, 91 B.R. at 169. This case was

not filed to frustrate any creditor, but to quickly work toward the sale of the Property to preserve the Debtor's equity and ultimately resolve Perkins' claim. The Debtor will file a plan capable of confirmation with accompanying sale and sale procedure motions. Dismissal is therefore inappropriate.

WHEREFORE, the Debtor respectfully requests that this Court enter an order denying the Motion and providing such other and further relief as may be just and proper.

Dated: January 9, 2017.

/s/ Ryan C. Reinert

ANDREW M. BRUMBY, ESQ.  
Florida Bar No. 0650080  
SHUTTS & BOWEN LLP  
300 S. Orange Avenue, Suite 1000  
Orlando, Florida 32801  
Telephone: (407) 835-6901  
Facsimile: (407) 849-7201  
E-mail: [abrumby@shutts.com](mailto:abrumby@shutts.com)

-and-

LARRY L. GLICK, ESQ.  
Florida Bar No. 75064  
SHUTTS & BOWEN LLP  
200 South Biscayne Blvd., Suite 4100  
Miami, Florida 33131  
Telephone: (305) 379-9180  
Facsimile: (305) 381-9882  
E-mail: [lglick@shutts.com](mailto:lglick@shutts.com)

-and-

RYAN C. REINERT, ESQ.  
Florida Bar No. 81989  
SHUTTS & BOWEN LLP  
4301 W. Boy Scout Blvd., Suite 300  
Tampa, Florida 33607  
Telephone: (813) 229-8900  
Facsimile: (813) 229-8901  
E-mail: [rreinert@shutts.com](mailto:rreinert@shutts.com)

*Counsel for the Debtor*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and copy of the foregoing has been provided this January 9, 2017, by  First Class U.S. Mail Postage Prepaid, to:

Seminole Tracks, Inc.  
230 Park Avenue  
c/o Pavia & Harcourt LLP  
New York, NY 10169

All parties listed on the attached matrix.

and by  CM/ECF to:

Benjamin E. Lambers  
Timberlake Annex  
501 E. Polk Street, Suite 1200  
Tampa, FL 33602

Diane L. Jensen  
Chene M. Thompson  
Pavese Law Firm  
P.O. Box Drawer 1507  
Fort Myers, FL 33902

*/s/ Ryan C. Reinert*  
\_\_\_\_\_  
Attorney

Label Matrix for local noticing

113A-9

Case 9:16-bk-10583-FMD

Middle District of Florida

Ft. Myers

Mon Jan 9 11:44:26 EST 2017

Andrew M. Brumby, Esq.

Shutts & Bowen LLP

300 S. Orange Avenue, Suite 1000

Orlando, FL 32801-5403

Dennis Perkins

c/o Diane L. Jensen, Esq.

PO Drawer 1507

Fort Myers, FL 33902-1507

Seminole Tracks, Inc.

c/o Pavia & Harcourt LLP

230 Park Avenue

New York, NY 10169-0005

Department of Revenue

PO Box 6668

Tallahassee FL 32314-6668

Finworld S.A.

Via Somaini 10

Lugano, Switzerland 6900

Hendry County Tax Collectors Office

25 E Hickpochee

LaBelle, FL 33935-5015

Internal Revenue Service

P.O. Box 7346

Philadelphia, PA 19101-7346

Strand Connect Inc

230 Park Avenue, 24th Floor

New York, NY 10169-0005

United Rentals, Inc

100 First Stamford Place Suite 700

Stamford, CT 06902-9200

Andrew M Brumby +

Shutts & Bowen LLP

300 South Orange Avenue, Suite 1000

Orlando, FL 32801-5403

Diane L. Jensen, Attorney for Trustee +

P.O. Drawer 1507

Fort Myers, FL 33902-1507

Benjamin E. Lambers +

Timberlake Annex

501 E. Polk Street, Suite 1200

Tampa, FL 33602-3945

United States Trustee - FTM +

Timberlake Annex, Suite 1200

501 E. Polk Street

Tampa, FL 33602-3949

Diane L. Jensen +

Attorney

P O Drawer 1507

Fort Myers, FL 33902-1507

Ryan C Reinert +

Shutts & Bowen LLP

4301 W Boy Scout Blvd, Ste 300

Tampa, FL 33607-5716

Larry I Glick +

Shutts & Bowen LLP

200 South Biscayne Boulevard

Suite 4100

Miami, FL 33131-2362

End of Label Matrix

Mailable recipients 18

Bypassed recipients 0

Total 18